

REMARKS

The Examiner has rejected claims 1-12 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,817,114 to Anderson et al. in view of U.S. Patent No. 5,938,673 to DePierro et al. Applicant respectfully asks the Examiner to reconsider this rejection in view of the following Remarks.

Claims 1, 8, and 12, all of the independent claims, are directed to a tongue device adapted to be pressed against a top surface of a user's mouth and all require at least the following elements: an elongated member having a handle portion and a head portion, the head portion being in contact with the top surface of the user's mouth, wherein the head portion is pressed against the top surface with the tongue to conform the head portion to the shape of it, wherein the handle portion is of a deformable material for deforming around a user's teeth, and wherein said head portion has a periphery which is sized and shaped to fit within the roof a user's mouth.

The device disclosed in Anderson et al. does not fit within a periphery of a roof of a user's mouth because Anderson et al.'s invention is required to be engaged with the user' teeth (and/or gums) to prevent forward and rearward movement of the tongue cleaner while in use (see col. 4, lines 1-5) by having a support member 12 extend out beyond the roof's periphery in order to engage the teeth (and/or gums). All disclosed embodiments and all claims of Anderson et al. require a support member and the support member is described to have a recess 18 for receiving teeth, such as a full set of teeth (col. 2, lines 40-45) or a single tooth (col. 4, lines 1-5). No matter which embodiment disclosed in Anderson et al. is considered, a support member is required and the support member must have a recess for engaging teeth (and/or gums), which

means the support member (as shown in figures 1-3, 5-8) must extend beyond a roof's periphery.

The Examiner expressly recognizes that "Anderson et al. fails to teach the tongue cleaning device sized and shaped to fit within the roof of a user's mouth." As such, the Examiner cites DePierro et al. as teaching such a feature, and states that "It would have been obvious to have provided the tongue cleaning device of Anderson et al. with the device of DePierro et al. sized and shaped to fit within the roof of the user's mouth, since the device of Anderson sized to fit within the roof of a user's mouth would provide greater movement ability of the device within the mouth to clean all areas of the tongue." Applicant respectfully disagrees for several reasons.

First, as discussed above, Anderson et al. repeatedly and explicitly teaches that the tongue cleaning device thereof must include a support member 12 extending out beyond the roof's periphery which includes a recess 18 for engaging the teeth (and/or gums) of the user. The modification of Anderson et al. suggested by the Examiner such that the device of Anderson et al. would fit within the periphery of the user's mouth would necessarily require the removal of such tooth (and/or gum) engaging members. One skilled in the art reading Anderson et al. would clearly understand that this modification is taught away from, and in fact, would be repugnant to the teachings of Anderson et al. As it is well settled that a design resulting from the combination of two references may not be repugnant to the teachings of one or more of the references, Applicant respectfully submits that the modifications suggested by the Examiner would be improper.

Moreover, Applicant respectfully disagrees with the Examiner's suggested motivation for the combination of Anderson et al. and DePierro et al. More specifically, the motivation suggested by the Examiner is that modifying "the device of Anderson

sized to fit within the roof of a user's mouth would provide greater movement ability of the device within the mouth to clean all areas of the tongue." However, this suggested motivation is also contrary to and taught against by the disclosure of Anderson et al. More specifically, Anderson et al. teaches that tongue cleaning devices which are allowed to be moved within the mouth are undesirable for a number of reasons. (col. 1, lines 17-47). As such, Anderson et al., clearly and expressly teaches that a device which is "retained much like an upper plate of teeth" is what is desired. (col. 1, lines 50-60). Thus, one skilled in the art faced with Anderson et al., would not be motivated to modify the device disclosed therein so as to "provide greater movement ability" as suggested by the Examiner as justification for the combination of Anderson et al. with DePierro et al. In fact, one skilled in the art would be motivated to provide just the opposite -- a device with less movement ability -- hence the disclosure in Anderson et al. of the tooth (and/or gum) engaging member.

For the foregoing reasons, Applicant respectfully submits that all pending claims, namely Claims 1-12, are patentable over the references of record, and notification to such effect is earnestly requested.

Respectfully submitted,



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